

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

**D.B., A Minor by and Through his Next
Friend and Mother, ANTIONETTE
LUNDY,**

Plaintiffs,

vs.

**SHELBY COUNTY HEALTH CARE
CORPORATION; SHELBY COUNTY
HEALTH CARE CORPORATION DBA
REGIONAL MEDICAL CENTER;
SHELBY COUNTY HEALTH CARE
CORPORATION DBA REGIONAL ONE
HEALTH; CHRIST COMMUNITY
HEALTH SERVICES, INC.; WILLIAM
MULLINAX, M.D.; ELLISA RAUSCH
KRUMM, M.D.; and DAVID JORDAN
PASLAY, M.D.,**

Defendants.

**Docket No. 2:17-cv-02806-SHM-cgc
JURY DEMAND**

NOTICE OF REMOVAL

Defendant Christ Community Health Services, Inc. (CCHS) submits this Notice of Removal and notify the Judges of the United States District Court for the Western District of Tennessee; Jimmy Moore, the Clerk of the Circuit Court of Shelby County, Tennessee; and the parties to this case this action, which was filed in the Circuit Court of Shelby County, Tennessee, Docket No. CT-003467-17, Div. III, is removed to the United States District Court for the Western District of Tennessee, Western Division.

1. On August 22, 2017, Plaintiffs filed a civil action bearing CT-003467-17 against Defendants in the Circuit Court of Shelby County, Tennessee. Plaintiffs seek damages against CCHS for injuries allegedly sustained as a result of health care liability.

2. Upon information and belief, at all relevant times, CCHS and its agents and employees, including Drs. Mullinax, Krumm, and Paslay, were deemed to be employees of the United States Public Health Service under 42 U.S.C. § 233(g). CCHS and its agents and employees, including Drs. Mullinax, Krumm, and Paslay, were acting within the scope of the employment at all relevant times.

3. Upon information and belief, this case is governed by the Federal Tort Claims Act under 42 U.S.C. § 233. It is removable to this Court under 28 U.S.C. § 1441. Under 42 U.S.C. § 233(g)(1)(A), this Court has original and exclusive jurisdiction in this matter.

4. Counsel for CCHS notified D. Michael Dunavant, the United States Attorney for the Western District of Tennessee, through Assistant United States Attorney William W. Siler, of the pendency of this action on September 20, 2017.

5. On September 27, 2017, the United States filed a Response to Filing of Action, stating that the United States would be unable to make a determination that CCHS and its agents and employees were deemed to be employees of the public health service within 15 days of the United States being notified of this action, as required by 42 U.S.C. § 233(l)(1). The United States also noted that its filing triggered CCHS' obligation to remove the case to this Court until the United States is able to determine whether it is the proper defendant.

6. As a result, this Notice of Removal is being filed under 42 U.S.C. § 233(l)(2), which provides that if the Attorney General fails to appear in state court within 15 days and

notifies the court of the Secretary's determination that CCHS and its employees and agents are considered employees of the public health service, then the "action shall be removed to the appropriate United States district court." Following removal, "[t]he civil action . . . shall be stayed in such court until such court conducts a hearing, and makes a determination, as to the appropriate forum or procedure for the assertion of the claim for damages . . . and issues an order consistent with such determination." 42 U.S.C. § 233(l)(2). Thus, CCHS and its agents and employees request that the Court stay this matter, pending the appropriate determination by the United States.

7. Plaintiffs served CCHS through its registered agent on September 1, 2017. The individually named physicians, Drs. Mullinax, Krumm, and Paslay, were served through their counsel on October 27, 2017.

8. Copies of the Complaint, Affidavit of Jane Holton, Certificate of Good Faith, Summonses, the United States of America's Response to Filing of Action, Plaintiff's Notice to Take Video Deposition of William Mullinax, M.D., Plaintiff's Notice to Take Video Deposition of David J. Paslay, M.D., and the Answer of Shelby County Healthcare Corporate d/b/a Regional One Health, which are all the "process, pleadings, and orders" served in this action, are attached hereto as **Exhibit 1**, in accordance with 28 U.S.C. § 1446(a).

9. A Notice of Filing Notice of Removal is being filed with the Shelby County, Tennessee, Circuit Court. A copy of the Notice is attached as **Exhibit 2**.

10. A Civil Cover Sheet is attached as **Exhibit 3**.

WHEREFORE, CCHS requests that this action, now pending in the Circuit Court of Shelby County, Tennessee, Docket No. CT-003467-17, Div. III, be removed to the United

States District Court for the Western District of Tennessee, Western Division, and that this action be stayed in accordance with 42 U.S.C. § 233(l)(2) until the Court holds a hearing to determine the appropriate forum for this action.

Respectfully submitted,

RAINEY, KIZER, REVIERE & BELL, P.L.C.

By: /s/Brandon J. Stout
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CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this pleading or document was served upon counsel for each of the parties by the Clerk of Court using the CM/ECF system.

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This the 3rd day of November 2017.

/s/Brandon J. Stout